

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA**

GEORGE A. TOLIVER,

Plaintiff,

v.

MARK GORDON, WAL-MART  
STORES, INC.,

Defendants.

2:09-CV-2293 JCM (LRL)

**ORDER**

Presently before the court is defendant Mike Gordon's motion for summary judgment and, in the alternative, motion to dismiss for lack of proper service pursuant to Fed. R. Civ. Proc. 12(b)(5). (Doc. #28). Plaintiff George Toliver's response was due on July 24, 2010. To date, plaintiff has not filed a response in opposition to the motion.

Plaintiff, a Nevada resident appearing pro se, filed his complaint in the Eighth Judicial District of the State of Nevada on October 28, 2009, against Wal-Mart and its alleged employee Mark Gordon. (Doc. #2). Wal-Mart, a Delaware corporation, had no record of a "Mark" Gordon and removed the action to this court on diversity grounds pursuant to 28 U.S.C. § 1332. Summary judgment was granted in Wal-Mart's favor on April 28, 2010. (Doc. #21).

Plaintiff proceeded to file an amended complaint against Mike Gordon alleging five causes of action: 1) false arrest; 2) malicious prosecution; 3) intentional infliction of emotional distress; 4) defamation of character; and 5) negligence. (Doc #24). Mike Gordon, a Nevada resident, was an employee of Wal-Mart at the time of the alleged incident that gave rise to this claim.

1 Now that plaintiff has named Mike Gordon, diversity jurisdiction has been destroyed.  
2 Additionally, plaintiff's claims do not implicate a federal question. Therefore, this court does not  
3 have subject matter jurisdiction. Because this court lacks jurisdiction, this case is remanded to the  
4 Eighth Judicial District of the State of Nevada.

5 Accordingly,

6 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that defendant Mike Gordon's  
7 motion for summary judgment and, in the alternative, motion to dismiss for lack of proper service  
8 pursuant to Fed. R. Civ. Proc. 12(b)(5), (Doc. #28), be, and the same hereby is, DENIED for lack  
9 of jurisdiction.

10 IT IS FURTHER ORDERED that this case is to be remanded to the Eighth Judicial District  
11 of the State of Nevada.

12 DATED August 12, 2010.

13  
14   
15 UNITED STATES DISTRICT JUDGE  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28